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No. 52

In the Supreme Court of the United States

OCTOBER TERM, 1945

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

INDEX

CITATIONS

669278—45——1

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OPINIONS BELOW

The opinion of the District Court (R. 39) is not reported. The opinion of the Court of Appeals (R. 42–46) is reported at 148 F. 2d 14.

JURISDICTION

The judgment of the Court of Appeals was entered on February 19, 1945. (R. 47.) The petition for a writ of certiorari was filed on March 29, 1945, and granted on April 30, 1945. (R. 48.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner was exempt from social security taxes as a corporation organized and operated exclusively for scientific or educational purposes within the meaning of Section 811 (b) (8) of the Social Security Act and Section 1426 (b) (8) of the Internal Revenue Code.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations are set forth in the Appendix, *infra*, pp. 24–27.

STATEMENT

The opinion of the District Court contains no findings of fact. The stipulated facts and principal exhibits (R. 9–25) may be summarized as follows:

The petitioner was organized under the laws of the District of Columbia. (R. 9.) Its charter states (R. 9–10):

> * * * the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the

District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purposes of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

The petitioner is not organized for profit and has no shares of stock, and no part of its earnings inure to the benefit of any private shareholder or individual. (R. 10.) Its officers are elected annually from its membership, have only nominal duties, and are paid no salary. Only the managing director and a number of employees are paid. (R. 11.) Membership is open to "any person, firm, corporation or association interested in better business ethics" as may be elected by the board of trustees and pay "voluntary subscriptions", or dues. (R. 15.)

The by-laws of the petitioner provide for a board of trustees numbering from 15 to 40 and elected by the members, which meets monthly to create and define the policy of the petitioner.

(R. 16.) An officer of the Advertising Club of Washington is a member of the board of trustees, so that the Club may "always be represented on this Board by one of its officers." (R. 17.) General management of the petitioner is vested in a paid secretary or managing director who is charged with the duty to "conduct all investigations and take such action as in his judgment he deems best, fit and proper, for the general conduct of this corporation or organization as to the final disposition to be made of cases investigated by him." (R. 11, 19.) Petitioner operates "through an experienced staff, including a director, assistant director, division managers, trained shoppers and office personnel." (R. 21.)

Information which the petitioner compiles is available to anyone without charge. (R. 10.) Petitioner gives warning of fraudulent schemes and seeks to frustrate them. (R. 11.) Newspapers and radio networks frequently refuse advertising facilities to enterprises exposed by petitioner. (R. 11.) Petitioner also endeavors to raise business standards by convincing merchants, especially through meetings, that "the doctrine of caveat emptor is not good business" (R. 11) and by advocating a constructive, voluntary plan of honest advertising in the interest of public confidence. Its efforts are frequently successful. (R. 11–12.) In the interest of consumers and in the belief that the public and the

business man should work together for a better understanding of each other's problems the petitioner communicates information and guidance to the public by talks to groups of individuals, bulletins, and radio addresses. (R. 12.) It encourages the consuming public to make inquiries from reliable sources before spending its money upon unknown or doubtful propositions.

Petitioner has a Merchandise Division which, aside from participating in the activities already mentioned, checks local advertising and seeks to obtain the cooperation of advertisers when inaccuracies are discovered, accepts and adjusts consumer complaints in order to bring "about a better understanding between business and consumer", and keeps merchants informed of new legislation and assists in putting it into effect. (R. 22.) Other services, available to members, include a bulletin issued at regular intervals and, upon special request, the preparation of reports on individuals or firms operating in or outside of Washington. (R. 22.) Petitioner exchanges information with 85 other Better Business Bureaus. (R. 13.)

Petitioner invokes the intervention of various law-enforcement agencies where other methods fail to bring results in the prevention of illegal practices (R. 21), and it assists in the prosecution of offenders "when necessary" (R. 22).

After paying the taxes involved for the calendar

years 1937 to 1941, inclusive, the petitioner filed claims for refunds, which were disallowed. (R. 26, 29, 33, 34.) It then sued in the District Court to recover its money. That court granted a motion for summary judgment for the United States. (R. 38.) The judgment of the District Court was affirmed by the United States Court of Appeals for the District of Columbia. (R. 47.)

SUMMARY OF ARGUMENT

The underlying purposes of petitioner and the nature of its activities must both be conducive to the same exempting end if petitioner's contention is to be sustained. It is not enough that petitioner may have the character of a business league, chamber of commerce, or civic organization; the claimed exemption from social security taxes requires that petitioner be devoted exclusively to an educational purpose. It is clear, we think, that petitioner has "an underlying commercial motive", as the court below found.

Both the declaration of purpose in petitioner's charter of incorporation and the nature of its organization and constituency reflect its underlying aim. That aim is not the "improvement or development of the capabilities of the individual", which the Treasury regulations correctly state to be the object of education, but, rather, to promote the successful functioning of the business system on a profitable basis. It is clear that this is not an exempting purpose.

Far from negativing the stated purpose and apparent character of petitioner as an organization, its activities themselves clearly serve the same end. The fact that some of them are educational in a limited sense does not outweigh the object toward which they are directed and could not in any event render instruction the "exclusive" function of petitioner in the face of other, entirely non-educational activities. It is a fair inference from the record that petitioner's policing activities, directed against unethical business practices and fraudulent merchandising schemes, occupy the most important place in its work. The by-laws specify the duty of the managing director in relation to these activities alone, and petitioner's appeal to prospective contributors stresses the same activities. The fact that this work is carried out on a high plane and is beneficial to the public at the same time that it aids legitimate business, does not make it educational. Petitioner's promotion of better business methods and more discriminating consumer practices, which constitutes educational activity in a limited sense, is education for the sake of business, rather than part of an essentially educational program.

The legislative history of Section 811 (b) (8) of the Social Security Act, upon which this case turns, shows that the exempting provision was intended to have sharply restricted application. Business leagues, chambers of commerce, and the

like, which are exempted from income taxation, were purposefully omitted from the Social Security Act exemption, except as to employees receiving less than $45 wages in a calendar quarter. The decision in *Jones* v. *Better Business Bureau of Oklahoma City,* 123 F. 2d 767 (C. C. A. 10), goes counter to the purpose of Congress and, as we believe, erroneously applies a liberal construction to an exempting provision from remedial legislation. Such a provision should, under the authorities, be strictly construed.

ARGUMENT

PETITIONER WAS NOT ORGANIZED AND OPERATED EXCLUSIVELY FOR SCIENTIFIC OR EDUCATIONAL PURPOSES WITHIN THE MEANING OF SECTION 811 (B) (8) OF THE SOCIAL SECURITY ACT AND SECTION 1426 (B) (8) OF THE INTERNAL REVENUE CODE

The Better Business Bureau contends that it is "organized and operated exclusively for * * * scientific * * * or educational purposes" within the meaning of Section 811 (b) (8) of the Social Security Act (*infra,* p. 24) and Section 1426 (b) (8) of the Internal Revenue Code (*infra,* pp. 24–26)[1] and hence is exempt from lia-

[1] Services performed by organizations defined in identical terms are excluded from the definition of employment qualifying for benefits under the social security legislation. Section 209 (b) (8) of the Social Security Act, as amended by Section 201 of the Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, 42 U. S. C. 409. Identical terms are also employed to confer exemption from the Federal income tax.

bility for employment taxes imposed by Sections 801, 802, and 804 of the Social Security Act and Sections 1400, 1401, and 1410 of the Internal Revenue Code. We maintain that the rejection of that contention by the courts below was correct.

The statute limits exemption to organizations which are both organized and operated exclusively for one or more of the designated purposes. Petitioner's stated purposes and the nature of its activities must both be conducive to the same exempting end if its contention is to be sustained. It is clear, we think, that both display "an underlying commercial motive", as the court below found (R. 44).

It is not enough that petitioner may have the character of a business league, chamber of commerce, or civic organization. It has in fact (R. 13) been recognized as exempt from income taxes as a business league pursuant to paragraph (7) of Section 101 of the Internal Revenue Code (see *supra*, fn. 1); and it might be exempted from social security taxes under Section 1426 (b) (10) (A) (26 U. S. C. 1426 (b) (10) (A)) with respect

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Paragraph (6) of Section 101 of the Internal Revenue Code, 26 U. S. C. 101 (6). Related exemptions from income taxes are those of business leagues, chambers of commerce, real estate boards, and boards of trade (*idem*, par. (7)) and of civic leagues and organizations operated exclusively for the promotion of social welfare (*idem*, par. (8)).

Contributions, gifts, and bequests to organizations defined in terms identical to those here involved are allowed as deductions from the income, gift, and estate taxes. Sections 23

to any employees who earned less than $45 in a calendar quarter; but this does not establish the exemption which it here asserts. To establish that requires educational or scientific[2] purposes and activities as distinguished from business or even civic ends and operations. We turn, then, to consider the purposes and activities of the Bureau.

A. *Petitioner is Disqualified for Exemption by its Expressed Purposes and by the Character of its Organization.*

The declaration of purposes contained in petitioner's charter of incorporation (R. 9–10) is clear and explicit and correctly reflects the nature

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(o) (2) of the Internal Revenue Code, as amended by Section 224 (a) of the Revenue Act of 1939, c. 247, 53 Stat. 862, 26 U. S. C. 23 (o) (2); Section 23 (q) of the Internal Revenue Code, as amended by Section 224 (b) of the Revenue Act of 1939; Section 125 of the Revenue Act of 1942, c. 619, 56 Stat. 822; Section 114 of the Revenue Act of 1943, c. 63, 58 Stat. 35, 26 U. S. C., Supp. IV, Sec. 23; and Sections 120, 162 (a), 213 (c), 331 (b), 812 (d), 861 (a) (3), 1004 (a) (2) (B) of the Internal Revenue Code, 26 U. S. C. 120, 162 (a), 213 (c), 331 (b), 812 (d), 861 (a) (3), and 1004 (a) (2) (B).

[2] It is in reality not contended, nor could it be, that petitioner pursues scientific ends. The question is whether petitioner is an educational organization within the meaning of the statute. We shall, accordingly, omit further reference to scientific objectives as an exempting feature. Petitioner also makes reference (Br. 15–18) to "charitable" purposes. Since this apparently is on the theory that they include educational ends and the point involved is still stated in terms of educational and scientific purposes (Pet. br. 10), we shall also not refer further to the exemption of charitable organizations.

of the activities which petitioner carries on. Petitioner was formed "[1] for the mutual welfare, protection and improvement of business methods among merchants * * * and * * * professions and occupations that deal directly * * * with the public * * *; [2] for the educational and scientific advancements of business methods," to the end that (a) the public can obtain a "proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons" and (b) "such as are engaged in the same" may "successfully and profitably conduct their business;" and "[3] to obtain the proper, just, fair and effective enforcement" of a statute against fraudulent advertising in the District of Columbia. These are purposes which are not directed to the end of "improvement or development of the capabilities of the individual," which Article 12 of Treasury Regulations 91 (*infra*, pp. 26–27) correctly states to be the object of education, but, rather, promote the successful functioning of the business system on a profitable basis—albeit the normal business system as opposed to fraudulent, unethical dealing with the public.

Petitioner's organization and constituency reflect its underlying purpose. Its appeal for financial support is addressed to business (R. 20–23, esp. pars. 11 and 16); its trustees are business men who serve in their capacity as such (R. 23–25). Manifestly its design is to preserve "the

security and good will to which all legitimate business is entitled, and which if endangered is damaging to you [who are solicited for support] as well as the firm directly affected" (R. 23).

In view of the foregoing, it is clear that petitioner is not aided by an underlying exempting purpose such as might prevail over attendant activities of a commercial nature, as were the taxpayers in *Trinidad* v. *Sagrada Orden*, 263 U. S. 578, relied upon by petitioner, and in such cases as *Bohemian Gymnastic Association* v. *Higgins*, 147 F. 2d 774 (C. C. A. 2d) and *Debs Memorial Radio Fund* v. *Commissioner*, 148 F. 2d 948 (C. C. A. 2d). It would require a strong showing to overcome the basic character which petitioner assumed in embarking upon corporate existence. Cf. *Roche's Beach, Inc.* v. *Commissioner*, 96 F. 2d 776, 777–778 (C. C. A. 2d);[3] *Bear Gulch Water Co.* v. *Commissioner*, 116 F. 2d 975 (C. C. A. 9th). There is no such showing here.

B. *Petitioner's Activities Do Not Reflect an Educational Purpose.*

Far from negativing the stated purpose and apparent character of petitioner as an organization, the activities which petitioner carries on clearly serve the same end. The fact that some of these activities are educational in a limited sense does

[3] The Commissioner of Internal Revenue has not acquiesced in the actual decision in the *Roche's Beach* case. G. C. M. 23063, 1942–1 Cum. Bull. 103.

not outweigh the object toward which they are directed and could not in any event render their immediate purpose of instruction the "exclusive" function of the organization in the face of other, entirely non-educational activities.

Petitioner's activities fall into three principal categories: (1) combatting specific instances of unethical practices and fraudulent merchandising schemes through (a) investigations, (b) persuasion for their abandonment, (c) closing of advertising media to them, (d) publicity and advice to inquirers, and (e) invocation of law enforcement agencies; (2) showing and convincing merchants that "the doctrine of caveat emptor is not good business" (R. 11), leading them to refrain from harmful methods of advertising; and (3) warning the buying public against careless spending and advising it of reliable sources of information.

It is a fair inference from the record that the first of these three categories of petitioner's activities occupies the most important place in its work; and it is in no sense educational. The only specific duty of the managing director spelled out in the by-laws, aside from the keeping of minutes, is that he "shall conduct all investigations and take such action as in his judgment he deems best * * * as to the final disposition to be made of cases investigated by him" (R. 19). Two out of four of petitioner's self-described purposes, or

types of activity; three out of six of its claimed services to the public; three out of five of the services of its Merchandise Division; all of the work of its Financial Division; the only additional service to members which is specifically mentioned; and the two "other services" of petitioner "to the public and business", relating to solicitation schemes and "classified advertising rackets", (R. 20–22) fall within this category. The fact that this work is carried out on a high plane, is designed to save the public much loss—loss which reduces the purchasing power available to legitimate business (R. 21)—and tends to maintain consumer confidence in legitimate business (R. 22–23) does not make it educational. It is a policing function, albeit under private auspices, and its purpose is avowedly self-protection and business advantage.

The same purpose animates the promotion of better business methods and more discriminating consumer practices which petitioner carries on and which, like highway safety training and the inculcation of vocational skills, has limited educational aspects. In the hands of petitioner, the goal of this educational work, which is business advantage rather than "improvement or development of the capabilities of the individual", determines its character for tax purposes. Occurring as it does in company with somewhat overshadowing efforts to thwart the schemes of swindlers, it

certainly cannot characterize petitioner as an organization "operated exclusively for educational * * * purposes".

Clearly, therefore, just as a scientific organization may operate on a basis of "science for the sake of business" rather than of "science for the sake of science" (*Underwriters' Laboratories* v. *Commissioner,* 135 F. 2d 371, 373 (C. C. A. 7th)), certiorari denied, 320 U. S. 756, so petitioner may fairly be said to carry on education for the sake of business. Its educational work, even though it might result in exemption if carried on alone or as part of a larger educational program, cannot confer exemption where, as here, it accompanies policing activity and is conducted for business reasons. *Marshall* v. *Commissioner,* 147 F. 2d 75 (C. C. A. 2d), certiorari denied, June 4, 1945; *Round Table Club* v. *Fontenot,* 143 F. 2d 196 (C. C. A. 5th); *West Side Tennis Club* v. *Commissioner,* 111 F. 2d 6 (C. C. A. 2d), certiorari denied, 311 U. S. 674; *Hazen* v. *National Rifle Ass'n of America,* 101 F. 2d 432 (App. D. C.); *Vanderbilt* v. *Commissioner,* 93 F. 2d 360 (C. C. A. 1st); *Stanford University Book Store* v. *Helvering,* 83 F. 2d 710 (App. D. C.); *Jockey Club* v. *Helvering,* 76 F. 2d 597 (C. C. A. 2d); *Davison* v. *Commissioner,* 60 F. 2d 50 (C. C. A. 2d); *Leubuscher* v. *Commissioner,* 54 F. 2d 998 (C. C. A. 2d); *Slee* v. *Commissioner,* 42 F. 2d 184 (C. C. A. 2d); *Stoeckel* v. *Commissioner,* 2 T. C. 975; *Cook* v. *Commissioner,* 30

B. T. A. 292; *Watson* v. *Commissioner,* 27 B. T. A. 463; *Norris* v. *Commissioner,* 22 B. T. A. 1146; *Colonial Trust Co.* v. *Commissioner,* 19 B. T. A. 174; *Price* v. *Commissioner,* 12 B. T. A. 1186; *Fales* v. *Commissioner,* 9 B. T. A. 828; *May* v. *Commissioner,* 1 B. T. A. 1220. See also G. C. M. 10232, Cum. Bull. XI–2, p. 104.

C. *The Legislative History of the Statutes and the Treasury Regulations Show that Organizations such as Petitioner Are Not Exempt.*

The history of Section 811 (b) (8) of the Social Security Act shows that the exempting provision was intended to have sharply restricted application. It was taken substantially verbatim from Section 101 (6) of the Revenue Act of 1934, c. 277, 48 Stat. 680. Congress did not, however, enact in the Social Security Act other exemptions embodied in Section 101, such as subsection (7) relating to "business leagues, chambers of commerce, real-estate boards, or boards of trade" such as petitioner (see *supra,* p. 9), or subsection (8), relating to "civic leagues." The Treasury Regulations in force at the time under Section 101 (6) (Article 101 (6)–1 of Treasury Regulations 86) stated—

> An educational organization within the meaning of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may

> include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. * * *

Article 101 (7)–1 of the same Regulations, promulgated under Section 101 (7), defined a "business league" as—

> * * * an association of persons having some common interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. * * *

To illustrate the charitable and educational organizations granted exemption from the Social Security Act, the committee reports on the Social Security Act specifically named "churches, schools, colleges," the Y. M. C. A., the Y. W. C. A., the Y. M. H. A., and the Salvation Army. H. Rep. No. 615, 74th Cong., 1st Sess., p. 33 (1939–2 Cum. Bull. 600); S. Rep. No. 628, 74th Cong., 1st Sess., p. 54 (1939–2 Cum. Bull. 611).

It is clear, therefore, that Congress intended to differentiate sharply between organizations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes on the one hand, and "business leagues," etc., on the other hand. See further, *Hassett* v. *Associated Hospital Service Corp.*, 125 F. 2d 611 (C. C. A. 1st), certiorari denied, 316 U. S. 672. See also, S. S. T. 7, XV–1 Cum. Bull. 475 (1936); S. S. T. 176, 1937–2 Cum. Bull. 445.

The narrow scope of Section 811 (b) (8) was confirmed by the enactment of the Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360. Sections 606 and 614 thereof redefined "employment" to exclude services performed in the employ of any organization exempt under Section 101 if the remuneration for such services did not exceed $45 in a calendar quarter. This redefinition was said by the committee reports to provide "new exemptions." H. Rep. No. 728, 76th Cong., 1st Sess., p. 47 (1939–2 Cum. Bull. 538); S. Rep. No. 734, 76th Cong., 1st Sess., p. 57 (1939–2 Cum. Bull. 565). As the court below stated (R. 54), the necessary implication of the new definition is that a "business league" is not exempt with respect to employees receiving more than $45. No contention has been made that any of the petitioner's employees received less than that amount.

A definition of an "educational organization" identical to that set forth in Article 101 (6)–1

of Treasury Regulations 86, quoted above, was promulgated under Section 811 (b) (8) of the Social Security Act shortly after it was first enacted, and again shortly after the enactment of the Social Security Act Amendments of 1939. Article 12 of Treasury Regulations 91 (Appendix, *infra*); Article 402.215 of Treasury Regulations 106 (Appendix, *infra*). In the circumstances the validity of these Regulations is beyond question. *Helvering* v. *Winmill*, 305 U. S. 79; *Helvering* v. *Reynolds Co.*, 306 U. S. 110; *White* v. *Winchester Club*, 315 U. S. 32. The petitioner plainly cannot qualify under the definition set forth in the Regulations. It was not "designed primarily for the improvement or development of the capabilities of the individual." There are no "exceptional circumstances" entitling it to be classified as an "association whose sole purpose is the instruction of the public or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community;" and in any event the petitioner cannot fit into either exceptional category. On the other hand, the petitioner falls squarely within the definition of a "business league" set forth in Article 101 (7)–1 of Treasury Regulations 86, quoted above, and in corresponding provisions of subsequent editions of the regulations.[4] It has ob-

[4] Article 101 (7)–1 of Treasury Regulations 94 and 101; Section 19.101 (7)–1 of Treasury Regulations 103; Section 29.101 (7)–1 of Treasury Regulations 111.

tained exemption from income tax on the ground that it is a "business league." In the words of the court below (R. 45)—

> * * * to exempt Better Business Bureau would be to exempt nearly every trade association and chamber of commerce which is engaged in similar activities. And thus we would read back into the Social Security Act an exemption of business leagues which was omitted by Congress.

In *Jones* v. *Better Business Bureau of Oklahoma City,* 123 F. 2d 767, the Circuit Court of Appeals for the Tenth Circuit held that a corporation operated for purposes much like those of the present petitioner was entitled to exemption under Section 811 (b) (8) of the Social Security Act. The majority opinion held (p. 769) that the exemption should be "liberally construed" since its purpose was "to encourage religious, charitable, scientific, literary, and educational associations * * *." From this it found warrant for taking the term "educational" purposes in its "broadest and best sense," and concluded that the taxpayer was exempt.

This approach obviously proves too much. As the court below pointed out (R. 45), similar programs are becoming part of the business activities of every industry. For purposes at least in substantial part commercial, non-profit organizations such as chambers of commerce, trade associations, and leagues of businesses ranging from the manu-

facture of clay sewer pipe to the furnishing of air transportation carry on programs to "educate" the public. Doubtless the public does benefit from such programs, but this does not alter the fact that an important purpose of each is the furtherance of business interests. If all these organizations were exempt from the operation of the Social Security Act, that remedial statute would have a field of operation far more restricted than Congress even intended, as shown by the legislative history recited above.

Even in the absence of a specific legislative history, the decision in the *Better Business Bureau of Oklahoma City* case could not be justified on the ground that exemption provisions of the character here involved are to be construed liberally. Similar provisions are embodied in many different federal statutes dealing not only with taxes and the coverage of the social security legislation, but also with such other diverse subjects as the issuance of securities and the renegotiation of contracts. In general these statutes may be said to grant exemption from remedial statutes or to confer privileges from the sovereign. According to the usual canons of statutory construction they should therefore be construed strictly.[8] In some situations, however, there has been a relaxation of

[8] *Cornell* v. *Coyne*, 192 U. S. 418, 431–432; *Bowers* v. *Lawyers Mortgage Co.*, 285 U. S. 182, 186–187; *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 440; *McDonald* v. *Thompson*, 305

the rigor of the normal rule of holding the taxpayer to the strict letter of an exemption provision. For example, it is common knowledge that religious organizations frequently obtain from investments part of the funds needed for their purposes, and that they normally have incidental activities which, although not strictly religious in character, serve to further their ultimate purposes. To give "exclusively" a strictly literal meaning in this situation would leave the exemption but little scope. Under the decision of this Court in the *Sagrada Orden* case, *supra*, such an organization is exempt, provided it does not carry on a business or engage in commercial competition with others. In other cases this Court has rejected technical arguments against the allowance of deductions claimed with respect to gifts made to organizations which obviously were organized and operated exclusively for exempt purposes. *Lederer* v. *Stockton*, 260 U. S. 3; *Hel-*

U. S. 263, 266; *Helvering* v. *Northwest Steel Mills*, 311 U. S. 46, 49; *Helvering* v. *Ohio Leather Co.*, 317 U. S. 102, 106.

For cases holding that statutes enacted in conformity to the federal social security laws should be construed liberally to achieve their beneficent purpose, and that exemptions must therefore be strictly construed, see *National Rifle Ass'n* v. *Young*, 134 F. 2d 524 (App. D. C.); *Consumers' Research* v. *Evans*, 128 N. J. L. 95; *Maine Unemployment Com.* v. *Androscoggin*, 137 Me. 154; *Matter of Mohawk Mills Assn.*, 260 App. Div. (N. Y.) 433; *Young* v. *Bureau of Unemployment Com.*, 63 Ga. App. 130; *Carroll* v. *Social Security Board*, 128 F. 2d 876 (C. C. A. 7th). But compare *Hassett* v. *Associated Hospital Service Corp.*, *supra*.

vering v. *Bliss,* 293 U. S. 144; *Old Colony Co.* v. *Commissioner,* 301 U. S. 379. We do not quarrel with liberal constructions of this character. They plainly afford no warrant, however, for expanding the meaning of "educational" beyond that normally attributed to it, or for exempting an organization because some of the means to achieve a commercial purpose might arguably be said to have educational aspects. The construction employed in the *Better Business Bureau of Oklahoma City* case could only serve to break down the carefully constructed categories of exempt purposes or functions established by Congress over a period of many years, and to confer exemptions on a scale far wider than Congress ever could have intended.

CONCLUSION

The decision below is correct and should be affirmed.

Respectfully submitted.

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October 1945. *Department of Justice.*

APPENDIX

Social Security Act, c. 531, 49 Stat. 620:

SEC. 811. WHEN USED IN THIS TITLE—

* * * * *

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

* * * * *

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (42 U. S. C. 1011.)

Internal Revenue Code:

SEC. 1426. DEFINITIONS. WHEN USED IN THIS SUBCHAPTER—

* * * * *

(b) *Employment.*—The term "employment" means any service of whatever nature, performed within the United States by an employee for his employer, except—

* * * * *

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or ani-

mals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; * * *. (26 U. S. C. 1426.)

Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360:

SEC. 606. Effective January 1, 1940, section 1426 of the Internal Revenue Code is amended to read as follows:

SEC. 1426. DEFINITIONS.

"When used in this subchapter—

* * * * * *

"(b) *Employment.*—The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

* * * * * *

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private share-

holder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;" (26 U. S. C. 1426).

Treasury Regulations 91, promulgated under Title VIII of the Social Security Act:

ART. 12. RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, AND EDUCATIONAL ORGANIZATIONS AND COMMUNITY CHESTS.—Services performed by any employee of an organization of the class specified in section 811 (b) (8) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

* * * * *

An educational organization within the meaning of section 811 (b) (8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement fea-

tures. An organization formed, or availed of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 811 (b) (8) of the Act.

The provisions of Section 402.215, Treasury Regulations 106, promulgated under the Federal Insurance Contributions Act (Sections 1400–1431 of the Internal Revenue Code) are substantially the same as those of Article 12, Treasury Regulations 91.

U. S. GOVERNMENT PRINTING OFFICE: 1949

SUPREME COURT OF THE UNITED STATES.

No. 52.—October Term, 1945.

Better Business Bureau of Washington, D. C., Inc., Petitioner, *vs.* United States of America.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[November 13, 1945.]

Mr. Justice Murphy delivered the opinion of the Court.

Here our consideration is directed to the question of whether the petitioner, the Better Business Bureau of Washington, D. C., Inc., is exempt from social security taxes as a corporation organized and operated exclusively for scientific or educational purposes within the meaning of Section 811(b)(8) of the Social Security Act.[1]

From the stipulated statement of facts it appears that petitioner was organized in 1920 as a non-profit corporation under the laws of the District of Columbia. It has no shares of stock and no part of its earnings inures to the benefit of any private shareholder or individual. Its officers are elected annually from its membership; they have merely nominal duties and are paid no salary. Only the managing director and a small number of employees are paid. Membership is open to "any person, firm, corporation or association interested in better business ethics" as may be elected by the board of trustees and pay "voluntary subscriptions" or dues.

The charter of petitioner states that "the object for which it is formed is for the mutual welfare, protection and improvement of

[1] 49 Stat. 620, 639, 42 U. S. C. § 1011(b): "The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—

. . . . . .

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

An amendment to this definition, not here relevant, was added in 1939. The entire definition has been incorporated into Section 1426(b)(8) of the Internal Revenue Code.

business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.'"

In carrying out its charter provisions, petitioner divides its work roughly into five subdivisions:

(1) Prevention of fraud by informing and warning members and the general public of the plans and schemes of various types of swindlers.

(2) Fighting fraud by bringing general and abstract fraudulent practices to the attention of the public.

(3) Elevation of business standards by showing and convincing merchants that the application of "the doctrine of caveat emptor is not good business" and by showing and convincing them that misleading, advertising, extravagant claims and price comparisons are not good business.

(4) Education of consumers to be intelligent buyers.

(5) Cooperation with various governmental agencies interested in law enforcement.

Information which the petitioner compiles is available to anyone without charge and is communicated to the members and the public by means of the radio, newspapers, bulletins, meetings and interviews. This information is also exchanged with the approximately eighty-five other Better Business Bureaus in the United States.

After paying the social security taxes for the calendar years 1937 to 1941, inclusive, petitioner filed claims for refunds, which

were disallowed. This suit to recover the taxes paid was then filed by petitioner in the District Court, which granted a motion for summary judgment for the United States. The court below affirmed the judgment, 148 F. 2d 14; and we granted certiorari, the Tenth Circuit Court of Appeals having reached a contrary result in *Jones* v. *Better Business Bureau of Oklahoma City*, 123 F. 2d 767.

Petitioner claims that it qualifies as a corporation "organized and operated exclusively for . . . scientific . . . or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual" within the meaning of Section 811(b)(8) of the Social Security Act and hence is exempt from payment of social security taxes. No serious assertion is made, however, that petitioner is devoted exclusively to scientific purposes. The basic contention is that all of its purposes and activities are directed toward the education of business men and the general public. Merchants are taught to conduct their businesses honestly, while consumers are taught to avoid being victimized and to purchase goods intelligently. We join with the courts below in rejecting this contention.

It has been urged that a liberal construction should be applied to this exemption from taxation under the Social Security Act in favor of religious, charitable and educational institutions. Cf. *Trinidad* v. *Sagrada Orden*, 263 U. S. 578; *Helvering* v. *Bliss*, 293 U. S. 144. But it is unnecessary to decide that issue here. Cf. *Hassett* v. *Associated Hospital Service Corporation*, 125 F. 2d 611 (C. C. A. 1). Even the most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on such an exemption are to be ignored. Petitioner's contention, however, demands precisely that type of statutory treatment. Hence it cannot prevail.

In this instance, in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. It thus becomes unnecessary to determine the correctness of the educational characterization of petitioner's

operations, it being apparent beyond dispute that an important if not the primary pursuit of petitioner's organization is to promote not only an ethical but also a profitable business community. The exemption is therefore unavailable to petitioner.

The commercial hue permeating petitioner's organization is reflected in its corporate title and in the charter provisions dedicating petitioner to the promotion of the "mutual welfare, protection and improvement of business methods among merchants" and others and to the securing of the "educational and scientific advancements of business methods" so that merchants might "successfully and profitably conduct their business." Petitioner's activities are largely animated by this commercial purpose. Unethical business practices and fraudulent merchandising schemes are investigated, exposed and destroyed. Such efforts to cleanse the business system of dishonest practices are highly commendable and may even serve incidentally to educate certain persons. But they are directed fundamentally to ends other than that of education. Any claim that education is the sole aim of petitioner's organization is thereby destroyed. See *Better Business Bureau* v. *District Unemployment Compensation Board*, 34 A. 2d 614 (D. C. Mun. App.).

The legislative history of Section 811(b)(8) of the Social Security Act confirms the conclusion that petitioner is not exempt under that section. This provision was drawn almost verbatim from Section 101(6) of the Internal Revenue Code, dealing with exemptions from income taxation. And Congress has made it clear, from its committee reports, that it meant to include within Section 811(b)(8) only those organizations exempt from the income tax under Section 101(6).[2] Significantly, however, Congress did not write into the Social Security Act certain other exemptions embodied in the income tax provisions, especially the exemption in Section 101(7) of "business leagues, chambers of commerce, real-estate boards, or boards of trade." Petitioner closely resembles such organizations and has, indeed, secured an exemption from the income tax under Section 101(7) as a "busi-

2 "The organizations which will be exempt from such [social security] taxes are churches, schools, colleges, and other educational institutions not operated for private profit, the Y. M. C. A., the Y. W. C. A., the Y. M. H. A., the Salvation Army, and other organizations which are exempt from income tax under section 101(6) of the Revenue Act of 1932." H. Rep. No. 615 (74th Cong., 1st Sess.) p. 33; S. Rep. No. 628 (74th Cong., 1st Sess.) p. 45.

ness league."[3] Thus Congress has made, for income tax exemption purposes, an unmistakable demarcation between corporations organized and operated exclusively for educational purposes and those organizations in the nature of business leagues and the like. Its manifest desire to include only the former within the meaning of Section 811(b)(8) of the Social Security Act prevents us from construing the language of that section to include an organization like petitioner.

Moreover, in amending the Social Security Act in 1939, Congress created certain new exemptions by providing, *inter alia*, that an organization exempt from income taxes under any of the subdivisions of Section 101 of the Internal Revenue Code was also exempt from social security taxes as to those employees receiving no more than $45 in a calendar quarter.[4] The Congressional committee reports referred specifically to "business leagues, chambers of commerce, real estate boards, [and] boards of trade" as being included among those organizations exempt from income taxes and affected by this new partial exemption from social security taxes.[5] The inescapable inference from this is that such organizations, of which petitioner is an example, remain subject to social security taxes as to higher paid employees. No contention has been made that any of petitioner's employees are within the low-paid category.

Finally, a Treasury regulation[6] defining an educational organization as "one designed primarily for the improvement or development of the capabilities of the individual" for purposes of Section 101(6) of the Internal Revenue Code was in effect at the time when Congress used that section in framing Section 811(b)(8) of the Social Security Act. An identical definition has been

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[3] Petitioner states that it was incorporated under the provision of the District of Columbia Code relating to educational and scientific institutions and it asserts that if it were another type of institution it would have been required to incorporate under some other Code provision. But petitioner's classification for incorporation purposes has no more relevance for purposes of exemption from social security taxes than it has for purposes of income tax exemption, as to which petitioner has been classified as a business league rather than as an educational or scientific institution.

[4] 53 Stat. 1360, 1374, 1384; 42 U. S. C. § 409(b)(10), 26 U. S. C. § 1426(b)(10).

[5] H. Rep. No. 728 (76th Cong., 1st Sess.) pp. 47-48; S. Rep. No. 734 (76th Cong., 1st Sess.) p. 57. Educational institutions of the type already exempt under Section 811(b)(8) were not mentioned in this respect.

[6] Article 101(6)-1 of Treasury Regulations 86.

promulgated under Section 811(b)(8) and petitioner admittedly does not meet its terms.[7] Under the circumstances the administrative definition is "highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute." *White* v. *Winchester Club*, 315 U. S. 32, 41. It lends persuasive weight to the conclusion we have reached.

For the foregoing reasons the judgment of the court below is

Affirmed.

* Mr. Justice JACKSON took no part in the consideration or decision of this case.

[7] Article 12 of Treasury Regulations 91; Section 402.215 of Treasury Regulations 106. The definition further states that "under exceptional circumstances" an educational organization "may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class ha incidental amusement features." No "exceptional circumstances" are apparent in petitioner's case and, moreover, neither exceptional category fits the petitioner.